



REPUBLIC OF KENYA



KENYA LAW
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**Platinum Credit Limited v Njenga (Civil Appeal E371 of 2023)
[2024] KEHC 9164 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E371 OF 2023**

JM NANG'EA, J

JULY 24, 2024

BETWEEN

PLATINUM CREDIT LIMITED APPELLANT

AND

PAUL THUMBI NJENGA RESPONDENT

(Being an appeal from the Judgement of the Chief Magistrate's Court at Kiambu (Hon. K. Sambu-SPM) delivered on 6th September 2023 in Kiambu CMCC NO. E221 OF 2022)

JUDGMENT

1. The appellant herein is challenging the said learned trial magistrate's judgement in which he granted reliefs for the respondent, the plaintiff in the suit before the lower court, as hereunder:
 - a. An order of injunction restraining the appellant and /or its agents from deducting or causing to be deducted from or in any manner interfering with the respondent's pay slip.
 - b. An order directing the appellant to reimburse all deductions on alleged second loan from June 2016 up to date that is Kenya Shillings Five Hundred and Thirteen Thousand and Six Hundred Shillings (Kshs 513,600/=) only (sic).
 - c. Interest.
 - d. Costs of the suit.
2. The summary of the case before the trial court is that sometime in 2015 the appellant advanced to the respondent a loan facility that was agreed to be repaid by monthly deductions from the latter's pay slip. That facility was fully repaid.



3. Notwithstanding full repayment of the loan, the respondent lamented that the appellant continued making deductions from his salary ostensibly because he had applied for “a top up” on his initial loan which claim the respondent averred to be untrue, hence the suit filed in the lower court.
4. The appellant filed defence traversing all the material particulars of the suit putting the respondent to strict proof.
5. The respondent, an employee of the judiciary, reiterated his position in his oral evidence before the trial court. He testified that he paid off the only loan of Ksh.150,000 he took on 12th March 2015 from the appellant and denied obtaining an alleged second loan of Kshs300,000. The respondent disowned his purported signatures on loan documents the appellant produced in a bid to prove that he benefited from a second loan. He added that he could not have taken the second loan as his pay slip could not support the same.
6. The appellant called its Legal Officer (Richard Simbala) who maintained that the respondent did obtain the second loan of Kshs 300,000 on 17th February 2016 which loan was to refinance the first loan. The respondent is accused of doctoring his pay slips supporting the second loan in order to show his eligibility for the loan. The contested loan sum is said to have been deposited into the respondent’s bank account.
7. The appellant’s Grounds of Appeal as stated in its Memorandum of Appeal dated 28th September 2023 forming part of the record may be condensed as hereunder:
 - a. That the learned trial magistrate erred in law and fact in ignoring the appellant’s evidence that the respondent did apply for and received the second loan of Kshs300,000 using forged pay slips calculated to show his eligibility therefor.
 - b. That the learned trial magistrate erred in law and fact by failing to order the respondent to refund proceeds of the loan in question deposited into his bank account.
 - c. That the learned trial magistrate erred in law and fact by ordering the appellant to reimburse all deductions from the respondent’s salary in respect of the contentious loan of Kshs 300,000 and restraining it from effecting any further deductions.
 - d. That the learned trial magistrate erred in law and fact by reaching his decision against the weight of evidence.
8. The appellant therefore prays for setting aside of the lower court’s judgement and substituting it with an order directing the respondent to pay an outstanding debt of Kshs 484,784. The appellant also pleads for the costs of the appeal.
9. The parties filed written submissions vide the court’s e-filing platform which I have perused against the record of this appeal.
10. It is trite law that the appellate court can only interfere with the findings and /or awards of the trial court if the court misdirects itself on matters of fact and /or law by failing to take relevant factors into account or by considering irrelevant factors and thus arrive at a plainly wrong decision (see the case of *Ocean Freight Shipping Co. Ltd V. Oakdale Commodities Ltd* (1997) eKLR Civil Appeal No. 198 of 1995). The appellate court also has the duty of analyzing and re-assessing the evidence on record and reach an independent decision as observed in the case of *Selle V. Associated Motor Boat Co.* (1968) EA 123.



11. The appellant in its submissions maintains that the respondent received and utilized the loan proceeds without protesting before turning around over 6 years later to claim that he didn't apply for the same. It is also contended that the respondent obtained the loan fraudulently using forged pay slips purporting to show his ability to make repayment. The appellant protests that in effect the trial court re-wrote the parties' contract contrary to the law as laid in various judicial decisions including the case of *Alton Homes Limited & Another V. Davis Nathan Chelogoi & 2 others* (2018) eKLR the appellant cited.
12. The respondent retorts in his submissions that the trial court rightly found in his favour. The court is told that the appellant unlawfully made deductions from the respondent's salary and that the loan forms the appellant exhibited in the trial court bear several inconsistencies that should be flagged (see case law in *Jackson Auko Opondo V. TSC & Another* (E& LRC Case No. 240 of 2014 cited and relied upon by the appellant.)
13. Deciding in favour of the respondent, the learned trial magistrate observed that the respondent's loan in question " at any rate could not have been accommodated by the plaintiff's (read the respondent) monthly earnings". The trial court further held and found that the loan application forms the appellant tendered as evidence that the respondent applied for the loan " contain glaring discrepancies on the age of the application, the plaintiff herein which loan forms did not indicate the purpose for the applied loans, thereby casting lots of doubts on the veracity of the contested documents" (sic). The learned trial magistrate continued: "More importantly, I note from the record that the defendant during trial did not demonstrate to the satisfaction of the court that one Simon Ndathi had the delegated role to have approved and/or confirmed the plaintiff's employment with the Judiciary taking cognizance and Judicial notice of the fact that the Judiciary is represented by the Chief Registrar as its accounting officer." The lower court further impugned the appellant for failure to exercise "due diligence" before disbursing the disputed loan and that the appellant's conduct " bordered on some kind of unprofessionalism an unethical practices in money lending institutions" (sic).
14. The respondent alleged fraud on the part of the appellant for forging pay slips purporting to belong to him as security for the loan in contention. The appellant is also said to have presented false loan application forms purporting to have been executed by the respondent.
15. Section 107(1) of the *Evidence Act* provides that " whoever desires any court to give judgement as to any legal right or liability dependent on existence of facts which he asserts must prove that those facts exist".
16. Section 108 of the *same Act* enacts that " the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side".
17. Section 109 of *the Act* provides that " the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person."
18. Clearly, the legal burden was on the respondent to demonstrate fraud in the transaction by dint of the above statutory provisions. Not only did he fail to plead the particulars of the alleged fraud in the suit, he didn't also prove the claim. It is trite that the standard of proof of fraud is higher than the balance of probability that generally applies to civil cases. I find that the respondent failed to discharge the burden. The respondent also lacks necessary bonafides having enjoyed the cash deposit made into his account for many years before suddenly discovering the anomaly. This conduct does not entitle the respondent to credit. The trial court erred in basing its decision on technical defects in the loan application documents rather than the substance of the appellant's arguments.



19. In the result, this appeal succeeds on all the stated grounds. The court is, however, unable to order the respondent to make good the said outstanding debt of Kshs 484,784 for the reason that the appellant did not put up a counterclaim.

20. The appellant will have the costs of this appeal and in the court below.

Judgement accordingly.

JUDGEMENT DELIVERED VIRTUALLY THIS 24TH DAY OF JULY, 2024 IN THE PRESENCE OF :

The Appellant's Advocate, Ms Kogai

The respondents' Advocate, Mr Ng'ang'a

The Court Assistant, Ruth

J. M. NANG'EA

JUDGE

